

CONVENIENCE DRAFT -- TEXT OF H. R. 16373 (as reported with amendments adopted by the Foreign Operations and Government Information Subcommittee)

This draft shows the text of H. R. 16373, the "Privacy Act of 1974", incorporating all amendments adopted by the Subcommittee to the original text of the bill during its August 21 and September 12 mark-up sessions. The bill, with these amendments, was favorably reported to the Full Committee on September 12 without a dissenting vote.

For informational purposes the names of the co-sponsors of H. R. 16373 are shown below. Some of the Members have reserved the right to offer amendments in the Full Committee and/or on the House floor and their listing here is not intended to necessarily constitute an endorsement of the version of the bill as amended during Subcommittee consideration.

Also accompanying this draft are the text of the original bill and a page-and-line listing of all amendments adopted during Subcommittee consideration.

93d Congress
2d Session

H. R. 16373

IN THE HOUSE OF REPRESENTATIVES

Mr. Moorhead of Pennsylvania (for himself, Ms. Abzug, Mr. Alexander, Mr. Broomfield, Mr. Erlenborn, Mr. Fascell, Mr. Goldwater, Mr. Gude, Mr. Koch, Mr. Litton, Mr. McCloskey, Mr. Moss, Mr. Thone, and Mr. Wright) introduced the following bill; which was referred to the Committee on Government Operations

A B I L L

To amend title 5, United States Code, by adding a section 552a to safeguard

individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies.

1 Be it enacted by the Senate and House of Representatives of the United
2 States of America in Congress assembled, That this Act may be cited as the
3 "Privacy Act of 1974".

4 SEC. 2. (a) The Congress finds that--

5 (1) the privacy of an individual is directly affected by the
6 collection, maintenance, use, and dissemination of personal information
7 by Federal agencies;
8 (2) the increasing use of computers and sophisticated information
9 technology, while essential to the efficient operations of the
10 government, has greatly magnified the harm to individual privacy that
11 can occur from any collection, maintenance, use, and dissemination of
12 personal information;

13 (3) the opportunities for an individual to secure employment,

1 insurance, and credit, and his right to due process, and other legal
2 protections are endangered by the misuse of certain information systems;

3 (4) the right to privacy is a personal and fundamental right
4 protected by the Constitution of the United States; and

5 (5) in order to protect the privacy of individuals identified in
6 information systems maintained by Federal agencies, it is necessary
7 and proper for the Congress to regulate the collection, maintenance,
8 use, and dissemination of information by such agencies.

9 (b) The purpose of this Act is to provide certain safeguards for an
10 individual against an invasion of personal privacy by requiring Federal
11 agencies, except as otherwise provided by law, to--

12 (1) permit an individual to determine what records pertaining to
13 him are collected, maintained, used, and disseminated by each such
14 agency;

15 (2) permit an individual to prevent records pertaining to him
16 obtained by such agencies for a particular purpose from being used
17 or made available for another purpose without his consent;

18 (3) permit an individual to gain access to certain Federal
19 agency records pertaining to him, to have a copy made of all or
20 any portion thereof, and to correct or amend such records;

21 (4) collect, maintain, use, or disseminate any record of
22 identifiable personal information in a manner that assures that
23 such action is for a necessary and lawful purpose, that the in-
24 formation is current and accurate for its intended use, and that
25 adequate safeguards are provided to prevent misuse of such information;

26 (5) permit exemptions from the requirements with respect to
27 records provided in this Act only in those cases where there is an
28 important public policy need for such exemption as has been determined
29 by specific statutory authority; and

30 (6) be subject to civil suit for any damages which occur as
31 a result of willful or negligent action which violates any
32 individual's rights under this Act.

33 SEC. 3. Title 5, United States Code, is amended by adding after
34 section 552 the following new section:

1 "§ 552a. Records maintained on individuals

2 "(a) Definitions.--For purposes of this section--

3 "(1) the term 'agency' means agency as defined in section
4 552(e) of this title;

5 "(2) the term 'individual' means a citizen of the United
6 States or an alien lawfully admitted for permanent residence;

7 "(3) the term 'maintain' includes maintain, collect, use, or
8 disseminate;

9 "(4) the term 'record' means any collection or grouping of
10 data about an individual that is maintained by an agency and that
11 contains his name, identifying number, symbol, or other identifying
12 particular assigned to each such individual;

13 "(5) the term 'system of records' means a group of any records
14 under the control of any agency from which information is retrieved
15 by the name of the individual or by some identifying number, symbol,
16 or other identifying particular assigned to each such individual;

17 "(6) the term 'statistical research or reporting record' means
18 a record in a system of records assembled or maintained for
19 statistical research or reporting purposes only and not used in
20 whole or in part in making any determination about an identifiable
21 individual, except as provided by section 8 of title 13, United
22 States Code; and

23 "(7) the term 'general request' means a request which is
24 made to each of ten or more individuals, or to every potential
25 individual recipient of a Government benefit or authorization,
26 for information pertaining to himself."

27 "(b) Conditions of Disclosure.--Notwithstanding section 3508(b)
28 of title 44, United States Code, no agency shall disclose any record
29 which is contained in a system of records by any means of communication
30 to any person, or to another agency, except pursuant to a written request
31 by, or with the prior written consent of, the individual to whom the
32 record pertains, unless disclosure would be--

33 "(1) to those officers and employees of that agency who have
34 a need for such record in the performance of their duties; or

35 "(2) permitted under section 552 of this title or required by
36 any other Federal statute; or

"(3) for a routine use described in any rule promulgated pursuant to subsection (e)(2)(D); or

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey pursuant to the provisions of title 13, United States Code; or

"(5) where the agency determines that the recipient of such record has provided advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and is to be transferred in a form that is not individually identifiable; or

"(6) when transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; or

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a law enforcement activity if such activity is authorized by statute and if the head of such agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought; or

"(8) pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual; or

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee.

"(c) Accounting of Certain Disclosures.--Each agency, with respect to each system of records under its control, shall--

"(1) keep an accurate accounting of--

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made pursuant to

subsection (b)(2), (4) or (7); and

"(B) the name and address of the person or agency to whom such disclosure is made;

"(2) retain the accounting made pursuant to paragraph (1) for at least five years after the disclosure for which such accounting is made;

"(3) except for disclosures made pursuant to subsection (b)(7), make the accounting available to the individual named therein at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of any record that has been disclosed to such person or agency within two years preceding the making of such correction of the individual's record, except that this paragraph shall not apply to any record that was disclosed prior to the effective date of this section or for which no accounting of such disclosure is required.

"(d) Access to Records.--Each agency that maintains a system of records shall--

"(1) upon request by any individual to gain access to any record pertaining to him which is contained in any particular system of records maintained by the agency, permit him to gain access to such record and have a copy made of all or any portion thereof in a form comprehensible to him;

"(2) permit such individual to request amendment of a record pertaining to him and either--

"(A) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(B) promptly inform such individual of its refusal to amend such record in accordance with his request, the reason for such refusal, the procedures established by the agency for the individual to request a review by the agency of that refusal, and the name and business address of the official within the agency to whom the request for review may be taken;

"(3) permit any such individual who disagrees with the agency's refusal to amend his record to request review of such refusal by the official named in accordance with paragraph (2)(B); and if, after such review, that official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the agency's refusal; and

"(4) in any disclosure relevant to such individual's disagreement occurring after the filing of the statement under paragraph (3), clearly note any portion of such record which is disputed and provide copies of such statement and, if the agency deems it appropriate, copies of a concise statement of the agency's reasons for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

"(e) Agency Requirements.--Each agency that maintains a system of records shall--

"(1) inform each individual whom it asks to supply information in response to a general request, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

"(A) whether supplying the information is required by statute (and if so, which statute), required by agency regulation (and if so, which regulation), or voluntary;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) other purposes for which the information may be used, as published pursuant to paragraph (2)(D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information.

"(2) publish in the Federal Register in January of each year, a notice of the existence and character of each such system of records, which notice shall include--

"(A) the name and location of each such system;

"(B) the categories of individuals on whom records are maintained in such system;

"(C) the categories of records maintained in such system;

"(D) each routine purpose for which the records contained in such system are used or intended to be used, including the categories of users of the records for each such purpose;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him; and

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(3) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness to the individual in such determination.

"(f) Agency Rules.--In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules in accordance with the requirements, including that of general notice, of section 553 of this title. Such rules shall--

"(1) establish procedures whereby an individual can be notified in response to his request if any particular system of records contains a record pertaining to him;

"(2) define reasonable items, places, and requirements for identifying individuals who request records pertaining to themselves before the agency shall make such records available to such individuals;

"(3) establish procedures for the disclosure to an individual upon his request of records pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

1 "(4) establish procedures for reviewing requests from individuals
2 concerning the amendment of records pertaining to such individuals,
3 for making a determination on such requests, for appeals within the
4 agency of initial adverse agency determinations, and for whatever
5 additional means the head of the agency may deem necessary for each
6 individual to be able to exercise fully his rights under this section;
7 and

8 "(5) establish fees to be charged, if any, to individuals for
9 making copies of their records, excluding the cost of any search
10 for such records and review of them.

11 "The Office of the Federal Register shall annually compile and publish
12 the rules promulgated pursuant to this subsection in a form available to
13 the public at low cost."

14 "(g)(1) Civil Remedies.--Whenever any agency (A) refuses to comply
15 with an individual request under subsection (d)(1) of this section, (B)
16 fails to maintain any record concerning any individual with such accuracy,
17 relevance, timeliness, and completeness as is necessary to assure fairness
18 in any determination relating to such individual's qualifications,
19 character, rights, opportunities, or benefits that may be made on the
20 basis of such records and consequently makes such a determination which
21 is adverse to the individual, or fails to act timely to correct an
22 individual's record, or (C) fails to comply with any other provision of
23 this section, or any rule promulgated thereunder, in such a way as to
24 have an adverse effect on an individual, such individual may bring a
25 civil action against such agency, and the district courts of the United
26 States shall have jurisdiction in such matters as provided by paragraph (4)
27 of this subsection.

28 "(2)(A) In any suit brought pursuant to the provisions of subsection
29 (g)(1)(A), the court may enjoin the agency from withholding the records
30 and order the production to the complainant of any agency records im-
31 properly withheld from him. In such a case the court shall determine
32 the matter de novo, and may examine the contents of any agency records in
33 camera to determine whether such records or any portion thereof may be
34 withheld under any of the exemptions set forth in subsection (j) or (k)
35 of this section, and the burden is on the agency to sustain its action.

1 "(B) The court may assess against the United States reasonable
2 attorney fees and other litigation costs reasonably incurred in any case
3 under this paragraph in which the complainant has substantially prevailed.

4 "(3) In any suit brought pursuant to the provisions of subsection (g)(1)
5 in which the court determines that the agency acted in a manner which
6 was willful, arbitrary, or capricious, the United States shall be liable
7 to the individual in an amount equal to the sum of--

8 "(A) actual damages sustained by the individual as a result
9 of such refusal or failure;

10 "(B) punitive damages allowed by the court; and

11 "(C) the costs of the action together with reasonable
12 attorney's fees as determined by the court.

13 "(4) An action to enforce any liability created under this section
14 may be brought in the district court of the United States in the district
15 in which the complainant resides, or has his principal place of business,
16 or in which the agency records are situated, or in the District of
17 Columbia, without regard to the amount in controversy, within two years
18 from the date on which the cause of action arises, except that where an
19 agency has materially and willfully misrepresented any information required
20 under this section to be disclosed to an individual and the information
21 so misrepresented is material to the establishment of the agency's
22 liability to that individual under this section, the action may be
23 brought at any time within two years after discovery by the individual
24 of the misrepresentation.

1 "(h) Rights of Legal Guardians. -- For the purposes of this
2 section, the parent of any minor or the legal guardian of any
3 individual who has been declared to be incompetent due to physical
4 or mental incapacity or age by a court of competent jurisdiction
5 may act on behalf of such individual.

6 "(i)(1) Criminal Penalties. -- Any officer or employee of
7 the United States, who by virtue of his employment or official
8 position, has possession of, or access to, agency records which
9 contain individually identifiable information the disclosure of
10 which is prohibited by this section or by rules or regulations
11 established pursuant thereto, and who knowing that disclosure of
12 such specific material is so prohibited, willfully discloses such
13 material in any manner to any person or agency not entitled to
14 receive it, shall be fined not more than \$5,000.

15 "(2) Any person who knowingly and willfully requests or obtains
16 any record concerning an individual from an agency under false pre-
17 tenses shall be fined not more than \$5,000.

18 "(j) General Exemptions. -- The head of any agency may
19 promulgate rules in accordance with the requirements, including that
20 of general notice, of section 553 of this title, to exempt any
21 system of records from any part of this section except subsections
22 (b) and (e)(2)(A) through (F) if such system of records is --

23 ✓"(1) maintained by the Central Intelligence Agency; or
24 "(2) maintained by an agency or component thereof which
25 performs as its principal function any activity pertaining to
26 the enforcement of criminal laws, including police efforts
27 to prevent, control, or reduce crime or to apprehend criminals,
28 and the activities of prosecutors, courts, correctional,
29 probation, pardon, or parole authorities, and which consists
30 of (a) information compiled for the purpose of identifying
31 individual criminal offenders and alleged offenders and con-
32 sisting only of identifying data and notations of arrests, the
33 nature and disposition of criminal charges, sentencing, con-
34 finement, release, and parole and probation status; (b) infor-
35 mation compiled for the purpose of a criminal investigation,

1 including reports of informants and investigators, and
2 associated with an identifiable individual; or (c) reports
3 identifiable to an individual compiled at any stage of the
4 process of enforcement of the criminal laws from arrest or
5 indictment through release from supervision.

6 "(k) Specific Exemptions. -- The head of any agency may
7 promulgate rules in accordance with the requirements, including
8 that of general notice, of section 553 of this title, to exempt
9 any system of records from subsections (c)(3), (d), (e)(1),
10 (e)(2)(G) and (H), and (f) if such system of records is --

11 "(1) subject to the provisions of section 552(b)(1)
12 of this title;

13 "(2) investigatory material compiled for law enforce-
14 ment purposes, except to the extent that such material is
15 within the scope of paragraph (j)(2) or is open to public
16 inspection under the provisions of section 552(b)(7) of this
17 title;

18 "(3) maintained in connection with providing protective
19 services to the President of the United States or other
20 individuals pursuant to section 3056 of title 18, United
21 States Code; or

22 "(4) required by statute to be maintained and used
23 solely as statistical research or reporting records.

24 "(1)(1) Archival Records. -- Agency records which are ac-
25 cepted by the Administrator of General Services for storage,
26 processing, and servicing in accordance with section 3103 of title
27 44, United States Code, shall, for the purposes of this section,
28 be considered to be maintained by the agency which deposited the
29 records and shall be subject to the provisions of this section.
30 The Administrator of General Services shall not disclose such
31 records, or any information therein, except to the agency which
32 maintains the records or pursuant to rules established by that
33 agency.

1 "(2) Agency records pertaining to identifiable individuals
2 which were transferred to the National Archives of the United
3 States as records which have sufficient historical or other value
4 to warrant their continued preservation by the United States
5 Government, prior to the effective date of this section, shall,
6 for the purposes of this section, be considered to be maintained
7 by the National Archives and shall not be subject to the pro-
8 visions of this section.

9 "(3) Agency records pertaining to identifiable individuals
10 which are transferred to the National Archives of the United
11 States as records which have sufficient historical or other value
12 to warrant their continued preservation by the United States
13 Government, on or after the effective date of this section, shall,
14 for the purposes of this section, be considered to be maintained
15 by the National Archives and shall be subject to all provisions
16 of this section except subsections (c)(4); (d)(2), (3), and (4);
17 (e)(1), (2)(G) and (H), and (3); (f)(4); (g)(1)(B) and (C); and
18 (g)(3).

19 "(m) Annual Report. -- The President shall submit to the
20 Speaker of the House and the President of the Senate, by June 30
21 of each calendar year, a consolidated report, separately listing
22 for each Federal agency the number of records contained in any
23 system of records which were exempted from the application of this
24 section pursuant to the provisions of subsections (j) and (k) of
25 this section during the preceding calendar year, and the reasons
26 for such exemptions, and such other information as indicates
27 efforts to administer fully this section."

28 SEC. 4. The chapter analysis of chapter 5 of title 5,
29 United States Code, is amended by inserting:
30 "552a. Records about individuals."
31 immediately below:
32 "552. Public information; agency rules, opinions, orders, and
33 proceedings."

1 SEC. 5. (a)(1) Title 44, United States Code, is amended
2 by adding after section 3506 the following new section:

3 "§3506a. Information concerning political and religious
4 beliefs and activities

5 "No Federal agency as defined shall maintain any record con-
6 cerning the political or religious belief or activity of any
7 individual, unless expressly authorized by statute or by the
8 individual about whom the record is maintained."

9 (2) The chapter analysis of chapter 35 of title 44, United
10 States Code, is amended by inserting:

11 "3506a. Information concerning political and religious beliefs
12 and activities."

13 immediately below:

14 "3506. Determination of necessity for information; hearing."

15 (b) Section 3508(b) of title 44, United States Code, is
16 amended by striking out the word "Information" at the beginning
17 thereof, and inserting in its place:

18 "Except for systems of records which are subject to the
19 provisions of section 552a of title 5, United States Code,
20 information".

21 SEC. 6. The amendments made by this Act shall become
22 effective on the one hundred and eightieth day following the date
23 of enactment of this Act, except that the amendments made with
24 respect to section 552a(f) of title 5, United States Code, shall
25 become effective on the date of enactment of this Act.